IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5635 of 2007()

CR. 30/07 OF ARYANADU EXCISE RANGE

PETITIONER/ACCUSED

WILSON, S/O LAZER,
AP V/457, KOTTAKKAKOM MURI, KOKKOTTELA,
ARYANADU VILLAGE.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENTS: COMPLAINANT

EXCISE INSPECTOR, ARYANADU EXCISE RANGE,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5635 of 2007

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Dated this the 19th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations of having committed an offence punishable under the Kerala Abkari Act. One barrel, containing 200 litres, of wash was allegedly found in the premises of his residential building. Crime has been registered. Investigation is in progress. The petitioner has not been arrested. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent of the allegations raised against him. The petitioner had no exclusive possession of the contraband article. The house in which he resides is occupied by many other members also. In these circumstances the petitioner may not be compelled to endure the undeserved trauma of arrest and detention, submits the learned counsel.

3. The learned Prosecutor opposes the application. The available materials indicate conscious possession of the petitioner and

no other occupant of the house. At any rate, this is not a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked, submits the learned Prosecutor.

4. I find merit in the opposition raised by the learned Prosecutor. I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. The petitioner has no case that any other occupant of the house is ill-disposed of him or that the Excise officials had any animus against the petitioner. There is no contention that they are colluding with other occupants of the house. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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